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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,264	03/31/2004	Sentaro Ito	033294-026	5346
21839 7590 05/03/2007 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER MANCHO, RONNIE M	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,264

Applicant(s)

ITO ET AL.

Examiner

Ronnie Mancho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/9/07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Remark

1. The application recites “road surface obtaining means for obtaining”. The applicant has not properly invoked the 112 sixth paragraph because of the recitation of the structure that performs the “obtaining”. The remark applies to the other means clauses in the claims.

See MPEP 2181 (R-3).

An example of properly invoking the 112 sixth paragraph is to write “road surface obtaining means for obtaining a cant amount of a road surface” as --means for obtaining a cant amount of a road surface--. This is just an example.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6, 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In amended claim 1, it is not clear what all is meant and encompassed by the phrase, “being excessive”. Applicant does not provide a standard by which “excessive” may be determined.

In claim 12, it is not clear what all is meant and encompassed by the phrase “the specific process differs”. Differs from what?

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In claim 14, it is not clear what all is meant and encompassed by the phrase, “the specific process.....starts different specific processes”. What are the “different specific processes” stated by the claimed “specific process”?

The rest of the claims are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-6, 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu et al (7003389).

Regarding claim 1, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose a control device for a vehicle comprising:

road surface obtaining means for obtaining a cant amount (i.e. a height difference; col. 6, lines 28-36) of a road surface, on which a vehicle runs in the vehicle body roll direction (col. 5, lines 29-67); and

specific process executing means for comparing the obtained cant amount itself with a predetermined value and for starting a specific process for preventing a roll angle of the vehicle from being excessive when the obtained cant amount itself becomes greater than the predetermined value (col. 6, lines 14-27).

Regarding claim 2, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 1, wherein the road surface obtaining means is provided with: motion state quantity obtaining means for obtaining motion state quantity showing a motion state of the vehicle (col. 6, lines 28-67);

estimated lateral acceleration calculating means for calculating, as an estimated lateral acceleration, an estimated value of a lateral acceleration that is a component of the acceleration exerted on the vehicle in the lateral direction of the vehicle body, based upon the obtained motion state quantity (col. 6, lines 28-67, fig. 4); and

a lateral acceleration sensor for obtaining the actual value of the lateral acceleration as an actual lateral acceleration by detecting the value of the component of external force exerted on the vehicle in the lateral direction of the vehicle body; wherein

the road surface obtaining means is configured to obtain the cant amount based upon the result of the comparison between the calculated estimated lateral acceleration and the obtained actual lateral acceleration (col. 6, lines 28-67, fig. 4).

Regarding claim 3, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the road surface obtaining means is configured to obtain the cant amount based upon a difference between the calculated estimated lateral acceleration and the obtained actual lateral acceleration.

Regarding claim 4, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the specific process executing means is configured to start the specific process when the obtained cant amount itself greater than the predetermined value and when the value of the obtained actual lateral acceleration is greater than the value of the calculated estimated lateral acceleration.

Regarding claim 5, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the motion state quantity obtaining means is configured so as to obtain the wheel speed of each wheel of the vehicle as the motion state quantity, and the estimated lateral acceleration calculating means is configured to calculate the estimated lateral acceleration based upon the difference between the wheel speed of the wheels at the left side of the vehicle body and the wheel speed of the wheels at the right side of the vehicle body.

Regarding claim 6, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 5, wherein the estimated lateral acceleration calculating means is configured to calculate the estimated lateral acceleration based upon the difference between the average of the wheel speeds

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of the front-left and rear-left wheels and the average of the wheel speeds of the front-right and rear-right wheels.

Regarding claim 9, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 1, wherein the specific process executing means is configured to start at least one of a process for producing an alarm and a process for decelerating the vehicle as the specific process.

Regarding claim 10, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the specific process executing means is configured to start at least one of a process for producing an alarm and a process for decelerating the vehicle as the specific process.

Regarding claim 11, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 10, wherein the process for decelerating the vehicle includes a process for producing braking force on the wheels of the vehicle by a brake fluid pressure regardless of an operation of a brake pedal.

Regarding claim 12, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 10, wherein the specific process differs depending upon an amount of time during the obtained cant amount itself continues to be greater than the predetermined value.

Regarding claim 13, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle as in claim 1, wherein the specific process executing means is configured to start the specific process when the

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obtained cant amount itself becomes greater than the predetermined value, and when a vehicle body speed is not less than a predetermined vehicle speed.

Regarding claim 14, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle as in claim 1, wherein the specific process executing means starts different specific processes for preventing the roll angle of the vehicle from being excessive depending upon an amount of time during which the obtained cant amount itself continues to be greater than the predetermined value.

MPEP 2114

The statement of intended use or field of use, "obtaining a value according to", "starting a specific process.....when.....is greater than", "obtaining motion state quantity, "calculatingbased upon", and similar clauses, etc are essentially method limitation or statement of intended or desired use. Thus, the claim as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647. See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Response to Arguments

6. Applicant's arguments filed 2/5/07 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not describe that “the disclosed system compares the *road bank angle itself* with a predetermined value”. And further that the prior art does not disclose that “when *the road bank angle itself* is greater than a predetermined value, the system starts a specific process for preventing a roll angle of the vehicle from becoming excessive.

The examiner respectfully disagrees. It is noted that the above argued limitations including “*road bank angle itself*” are not in the claims

It is further noted that applicant's claims are apparatus claims and NOT method claims. Applicant's arguments are drawn to method limitations in apparatus claims.

MPEP 2114 [R-1] *Apparatus and Article Claims — Functional Language*

For a discussion of case law which provides guidance in interpreting the functional portion of means-plus-function limitations see MPEP § 2181 - § 2186.

**APPARATUS CLAIMS MUST BE STRUCTU-RALLY DISTINGUISHABLE
FROM THE PRIOR ART**

>While features of an apparatus may be recited either structurally or functionally, claims<directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE
APPARATUS CLAIM FROM THE PRIOR ART

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Exparte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

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Further, applicant's arguments are drawn to limitations that have 112 issues. The 112 issues need to be cleared.

It is believed that the prior art, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose a control device for a vehicle comprising:

road surface obtaining means for obtaining a cant amount (i.e. a height difference; col. 6, lines 28-36) of a road surface, on which a vehicle runs in the vehicle body roll direction (col. 5, lines 29-67); and

specific process executing means for comparing the obtained cant amount itself with a predetermined value and for starting a specific process for preventing a roll angle of the vehicle from being excessive when the obtained cant amount itself becomes greater than the predetermined value (col. 6, lines 14-27).

The prior art has the same structure as applicants invention and is capable of operating in the exact manner as in the invention.

Applicant further argues that the rejection based on the 112 sixth paragraph is not understood. The examiner has provided an explanation of how to remedy the 112 sixth issue.

Applicant further argues that the wording of the claim sets for "functions associated with the means plus function" and as such the limitations are not method of use. The examiner disagrees. The MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE APPARATUS CLAIM FROM THE PRIOR ART. It is further noted that APPARATUS CLAIMS MUST BE STRUCTU-RALLY DISTINGUISHABLE FROM THE PRIOR ART

Claims 1, 12-14 have 112 issues that need correction. Applicant's arguments with regard to the claims are not convincing in view of MPEP 2114 and since the limitations in the claims have 112 issues that need correction.

It is believed that the rejections are proper and thus stand.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Communication

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571-272-6984. The examiner can normally be reached on Mon-Thurs: 9-5.

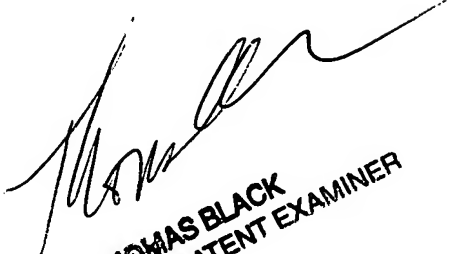
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronnie Mancho
Examiner
Art Unit 3663

4/19/07



THOMAS BLACK
SUPERVISORY PATENT EXAMINER